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U.S. Citizenship
and Immigration
Services



FILE:



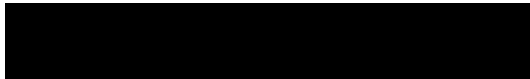
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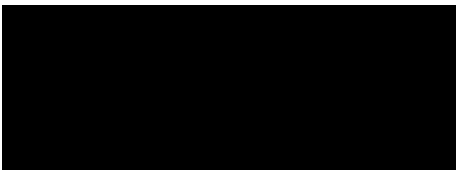
Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 7, 1972, in Jamaica. The applicant's father, [REDACTED] was born in Jamaica on May 17, 1949, and he became a naturalized U.S. citizen on March 13, 1985, when the applicant was twelve years old. The applicant's mother [REDACTED] was born in Jamaica, and she became a naturalized U.S. citizen in 1996, when the applicant was twenty-three years old. The record reflects that the applicant's parents never married. The applicant was admitted into the United States as a lawful permanent resident in 1980. He seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The interim district director determined that the applicant was ineligible for U.S. citizenship under section 321 of the former Act because his parents were not legally married or legally divorced or separated prior to his eighteenth birthday.

On appeal, counsel asserts that the applicant is eligible for citizenship under section 321 of the former Act because he has established the biological relationship between himself and his father, and he has demonstrated that his father legitimated him and had legal custody over him prior to his eighteenth birthday. Counsel asserts further that gender-based provisions contained in section 321 of the former Act are discriminatory and deny the applicant due process and equal protection rights under the U.S. Constitution.

Section 321 of the former Act provides, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased;
or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years;
and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

(Emphasis added.) The applicant does not claim that his mother is deceased or that she became a naturalized U.S. citizen prior to his eighteenth birthday, and the record contains no evidence to indicate that either event occurred.

The AAO therefore finds that the requirements set forth in section 321(a)(1) and 321(a)(2) of the former Act have not been met.

The AAO additionally finds that the applicant has failed to establish he meets the legal separation requirements set forth in section 321(a)(3) of the former Act. The applicant and counsel concede that the applicant's parents never married, and precedent legal decisions have stated clearly that, "[l]egal separation of the parents . . . means either a limited or absolute divorce obtained through judicial proceedings [W]here the actual parents of the child were never married, there could be no legal separation of such parent." *See Matter of H*, 3 I&N Dec. 742 (1949). (Quotations omitted). Accordingly, the AAO finds that the applicant failed to establish that his parents were legally married or that they obtained a legal separation or divorce prior to his eighteenth birthday. The applicant therefore does not qualify for consideration under former section 321 of the Act.

The AAO finds further that it has no jurisdiction to rule upon the constitutionality of provisions contained in the Immigration and Nationality Act. *See Matter of C-*, 20 I&N Dec. 29 (BIA 1992). *See also* 8 C.F.R. § 103.1(2)(iii) (2003) and 8 C.F.R. § 2.1 (2004). The AAO will therefore not address counsel's assertion that statutory provisions contained in section 321 of the former Act violate the applicant's due process or equal protection rights under the U.S. Constitution.¹

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has not met his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that, although not a binding precedent in the present case, the New Jersey U.S. District Court held in *Charles v. Reno*, 117 F.Supp. 2d. 412 (U.S. Dist.Ct. New Jersey, 2000) that legal marriage and legal divorce and separation requirements contained in section 321 of the former Act did not violate equal protection rights and were constitutional.